

REMARKS

This response is in reply to the final Office Action ("Office Action") mailed November 10, 2009. Claims 1-11 and 13 were rejected in the Office Action under 35 U.S.C. § 101 as being unpatentable because the claimed invention is allegedly directed to non-statutory subject matter. Claims 1-11 and 13 were rejected in the Office Action under the first paragraph of 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. Claims 1, 3, 8, 10, 11 and 13 were rejected in the Office Action under 35 U.S.C. § 102(e) as allegedly anticipated over U.S. Patent Application Publication No. 2003/0162495, to Yonemoto et al. ("Yonemoto"). Claims 2, 5 and 6 were rejected in the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yonemoto in view of U.S. Patent Application Publication No. 2004/0114522, to Friesen et al. ("Friesen"). Claim 4 was rejected in the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yonemoto in view of U.S. Patent Application Publication No. 2005/0020240, to Minter et al. ("Minter"). Claim 7 was rejected in the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yonemoto in view of U.S. Patent No. 6,614,797, to Hippelainen et al. ("Hippelainen"). Claim 9 was rejected in the Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yonemoto in view of U.S. Patent Application Publication No. 2006/0031749, to Schramm et al. ("Schramm").

Summary of Examiner Interview

Applicants would like to thank Examiner Philip Wang for conducting a telephone interview on February 25, 2010. While no agreement was reached with regard to patentability or overcoming the cited and applied references, the discussion of the Yonemoto reference in light of the rejections was helpful in working to advance prosecution in the present application.

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Status of the Claims

While applicants respectfully disagree with the basis for the rejections, clarifying amendments have been made to Claims 1, 4 and 13. The present amendments find support, for example, in Figures 5 and 7, and paragraphs [0053] and [0067]–[0070] of the specification as seen in the published application (U.S. Patent Application Publication No. 2006/0031513).

Applicants respectfully assert that the present application is in condition for allowance for at least the reasons discussed below.

Rejections Under 35 U.S.C. § 101

Claims 1–11 and 13 were rejected in the Office Action under 35 U.S.C. § 101 as being unpatentable because the claimed invention is allegedly directed to non-statutory subject matter. In particular, the Office Action contends that an apparatus without specific inclusion of a piece of hardware can be interpreted as software, which is allegedly non-statutory. (See Office Action, page 3.) While applicants respectfully disagree that Claims 1–11 and 13 are directed to non-statutory subject matter, applicants have made clarifying amendments to Claims 1 and 13 to include "a memory." Also, since Claims 2–11 depend from Claim 1, they too recite "a memory." Accordingly, applicants respectfully request that the rejections of Claims 1–11 and 13 under 35 U.S.C. § 101 be withdrawn.

Rejections Under 35 U.S.C. § 112, first paragraph

Claims 1–11 and 13 were rejected in the Office Action under the first paragraph of 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. In particular, the Office Action contends that the control over distribution priorities is according to media classification not on a per media data item basis. (See Office Action, page 4.)

As with the section 101 rejections, applicants respectfully disagree that Claims 1–11 and 13 fail to comply with the written description requirement. Despite this, Claim 1 has been

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amended to recite that "a media distribution setting section that associates control information and distribution priorities based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels." Similarly, Claim 13 has been amended to recite that "associating control information and distribution priorities of a plurality of media data items based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels." Additionally, Claims 2–11 depend from Claim 1 and therefore also recite the newly added features as discussed above.

For at least these reasons, Claims 1–11 and 13 satisfy the written description requirement. Therefore, applicants respectfully request withdrawal of the rejections of Claims 1–11 and 13 under the first paragraph of 35 U.S.C. § 112.

Rejections Under 35 U.S.C. § 102(e)

To show that a claim is anticipated under 35 U.S.C. § 102(e), each and every element as set forth in the claim must be found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros., Inc. v. Union Oil Company of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants assert that Yonemoto does not anticipate Claims 1, 3, 8, 10, 11 and 13 as alleged in the Office Action because each and every element as set forth in the claims is not taught or suggested by the reference.

Claims 1, 3, 8, 10 and 11

Clarifying amendments have been made to Claims 1 so as to recite, in part, "a media distribution setting section that associates control information and distribution priorities based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels," "a distributing section that distributes the plurality of media data items and the control information to the plurality of receiving areas according to the

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distribution priorities," and that "each of the distribution priorities is assigned to at least one of the plurality of receiving areas."

The Office Action alleges that paragraphs [0164] and [0302] of Yonemoto teach the features recited in Claim 1. At paragraph [0164] of Yonemoto, however, it is purportedly disclosed that "[t]he 'SMIL' includes the reproduction information ... and layout information," not that control information and distribution priorities are associated "based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels." Also, Yonemoto at paragraph [0302] purportedly discloses that the "'TOS field' enables control of the number of repeated transmissions of data transmitted in the data carousel system according to priority." This is not the same as distributing " plurality of media data items and the control information ... according to the distribution priorities, wherein each of the distribution priorities is assigned to at least one of the plurality of receiving areas."

As such, Yonemoto fails to disclose each and every element recited in amended Claim 1. Therefore, applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection of Claim 1. Further, applicants respectfully request withdrawal of the rejections to Claims 3, 8, 10 and 11, which depend from amended Claim 1 and thus recite all of the same features as Claim 1.

Claim 13

Similar to Claim 1, Claim 13 has been amended to recite a method in a distribution apparatus comprising "associating control information and distribution priorities of a plurality of media data items based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels," "distributing the plurality of media data items read from a memory and the control information to the plurality of receiving areas according to the distribution priorities," and that "each of the distribution priorities is assigned to at least one of the plurality of receiving areas."

However, as discussed above with regard to Claims 1, applicants respectfully submit that Yonemoto does not disclose the subject matter recited in Claim 13. For example, there is no teaching or suggestion in Yonemoto that there is a plurality of receiving areas or that "each of the distribution priorities is assigned to at least one of the plurality of receiving areas." Nor is there any teaching or suggestion in Yonemoto of "associating control information and distribution priorities of a plurality of media data items based on classifications of the plurality of media data items and a plurality of receiving areas associated with a plurality of bearer channels." As such, Yonemoto fails to disclose each and every element recited in amended Claim 13. Therefore, applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection of Claim 13.

Rejections Under 35 U.S.C. § 103

Claims 2, 5, and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yonemoto in view of Friesen. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Yonemoto in view of Minter. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Yonemoto in view of Hippelainen. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Yonemoto in view of Schramm.

A *prima facie* case of obviousness may be established under section 103 if "all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007); M.P.E.P. § 2143.A. Because Claims 2, 4, 5, 6, 7, and 9 recite combinations of features neither taught nor suggested in the prior art, a *prima facie* case of obviousness has not been made.

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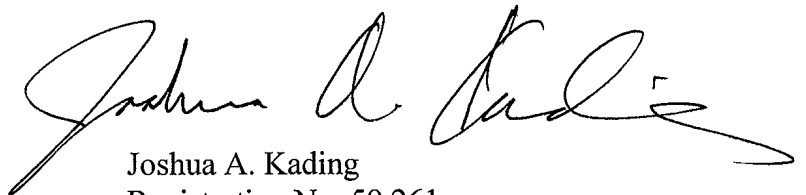
Claims 2, 4, 5, 6, 7, and 9 depend from Claim 1, and thus, each and every element recited in Claim 1 is also found in dependent Claims 2, 4, 5, 6, 7, and 9. As such, for at least the reasons discussed above with respect to Claim 1, Yonemoto in view of Friesen, Minter, Hippelainen, or Schramm also fails to teach each and every element of Claims 2, 4, 5, 6, 7, and 9. Accordingly, a *prima facie* case of obviousness has not been established against Claims 2, 4, 5, 6, 7, and 9, and applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of Claims 2, 4, 5, 6, 7, and 9.

CONCLUSION

Applicants submit this is a full and complete response to the final Office Action mailed on November 10, 2009. For at least the reasons above, Claims 1-11 and 13 are in condition for allowance. If there are any remaining issues, or if an Examiner's Amendment is needed to correct minor informalities, the Examiner is invited to call the undersigned attorney at the number below.

Respectfully submitted,

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